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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Accu-Temp Heating & Air Conditioning, Inc.

Serial No. 76305730

Mark D. Schneider and Ernest I. Gifford of Gifford Krass
Groh Sprinkle Anderson & Citkowski, P.C. for Accu-Temp
Heating & Air Conditioning, Inc.

Lesley LaMothe, Trademark Examining Attorney, Law Office
103 (Michael Hamilton, Managing Attorney).

Before Simms, Bucher and Bottorff, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Accu-Temp Heating & Air Conditioning, Inc. seeks
registration on the Principal Register of the mark as shown
below:



for services recited as "installation, repair and maintenance of heating and air conditioning equipment," in International Class 37.¹

This case is now before the Board on appeal from the final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has held that applicant's mark, when used in connection with the recited services, so resembles the following mark:

ACCUTEMP
REFRIGERATION INC.

which is registered for "installation, repair and maintenance of heating, cooling and refrigeration equipment," also in International Class 37,² that it is likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney have fully briefed this appeal, but applicant did not request an oral hearing.

¹ Application Serial No. 76305730 was filed on August 27, 2001, based upon applicant's allegations of use in commerce at least as early as November 30, 1997. Applicant has disclaimed the words HEATING & AIR CONDITIONING, INC. apart from the mark as shown.

² Registration No. 2311329, issued on the Principal Register on January 25, 2000. Registrant disclaimed the words REFRIGERATION INC. apart from the mark as shown.

We affirm the refusal to register.

Applicant's primary contention is that its distinctive arrow and target design, when combined with the dissimilarities in the literal elements of the two marks, create for its mark a different overall commercial impression sufficient to overcome any likelihood of confusion with the cited mark.

By contrast, the Trademark Examining Attorney takes the position that the marks are quite similar, being dominated by the substantially identical ACCUTEMP/ACCU-TEMP portions of the respective marks, and she also notes that the respective services are identical in part and otherwise very closely related.

Our determination under Section 2(d) is based upon an analysis of all of the facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We turn first to the du Pont factor focusing on the relationship of the services as described in the

application and in the cited registration. As to the relatedness of the respective services of applicant and of registrant, these services as recited are nearly identical. Both registrant and applicant are involved in many of the same activities, namely, the installation, repair and maintenance of heating and cooling (or air conditioning) equipment. Registrant simply includes "refrigeration equipment" in the list of items it installs, repairs and maintains. Presumably this term is broad enough to include devices for cooling food as well as large commercial chillers.

Moreover, turning to the du Pont factors dealing with the similarity or dissimilarity of established, likely-to-continue trade channels as well as the conditions under which and buyers to whom sales are made, we must presume that applicant's services and registrant's services will move through all of the normal channels of trade to all of the usual consumers of services of the type recited. See Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). Hence, in looking to these two related du Pont factors, we conclude that the channels of trade and classes of purchasers will be the same.

We turn then to the similarity or dissimilarity of the marks in their entirety as to appearance, sound and connotation. We note at the outset that when the services are legally identical, as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).³

As to the standard for comparing marks, the likely recollection of the average purchaser of the respective goods is what must be considered in resolving the issue of likelihood of confusion. Spoons Restaurants, Inc. v. Morrison, Inc., 23 USPQ2d 71735 (TTAB 1991); and In re Steury Corp., 189 USPQ 353 (TTAB 1975). Such a person may not possess perfect recollection, nor will he or she necessarily be confronted by both marks simultaneously so

³ We have not considered the recent, nonprecedential Board decision referred to by applicant where the likelihood of confusion refusal was reversed based on arguably analogous differences between the marks as to the non-literal design features. See General Mills Inc. v. Health Valley Foods, 24 USPQ2d 1270 (TTAB 1992); In re American Olean Tile Co., 1 USPQ2d 1823 (TTAB 1986). Nonetheless, unlike the facts in the instant case, the Board found in that case somewhat different and specialized services that would be purchased by knowledgeable individuals exercising a degree of care. These important factors, when combined with the overall differences in the marks, were critical to the outcome in that decision.

that a side-by-side comparison can be conducted. See In re Continental Graphics Corp., 52 USPQ2d 1374 (TTAB 1999).

Nonetheless, applicant makes much of the visual differences in the marks created by applicant's design features:

Specifically, Applicant's mark comprises an arrangement of designs and stylized wording that have been combined to depict an arrow striking the center of a target. The highly stylized "A" (the fletching of the arrow) on the left side of the mark and the target design on the right are predominate [sic] and are clearly the first details that grasps [sic] one's attention. The stylized "P" (as tip of the arrow) completes the overall arrow design. In contrast, the mark of the prior registration includes rudimentary design changes (i.e., different fonts), but is not otherwise stylized. Therefore, the overall design features of Applicant's mark serves to clearly distinguish it in the minds of consumers from the mark of the prior registration.

(Applicant's appeal brief, p. 4).

We disagree with applicant's conclusions. The marks in the application and the cited registrations easily meet the level of similarity required in Century 21, *supra*, because each is dominated by the identical, coined terminology of ACCUTEMP⁴ (or ACCU-TEMP). In both marks,

⁴ Furthermore, registrant is listed as AccuTemp Refrigeration Inc. (with upper case letters "A" and "T"). Hence, when incorporated into text, registrant's AccuTemp looks remarkably similar to applicant's Accu-Temp.

this portion of the marks appears in much larger print than the other wording and has no demonstrated descriptive connotation.

It is well settled that although we must consider the marks in their entireties, it is nonetheless reasonable to consider whether some components of the marks have more source-identifying significance than others. Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (CCPA 1976); and In re El Torito Restaurants Inc., 9 USPQ2d 2002 (TTAB 1988).

For example, descriptive, disclaimed matter is typically less significant than other components of composite marks. The REFRIGERATION INC. and HEATING & AIR CONDITIONING, INC. portions of these respective marks are both disclaimed, indicating that they are merely descriptive of these equipment installation, repair and maintenance services. Moreover, the connotations of these descriptive, disclaimed terms are actually quite similar because the terms "Refrigeration" and "Air Conditioning" are related conceptually and practically. Both expressions suggest cooling down an interior space, and both processes rely on "refrigerants" to make this cooling possible.

Similarly, in a composite mark made up of a design and words, design features generally are accorded less

significance than the literal elements with which they are combined because the word portion is more likely to be recalled and used in calling for or recommending the goods or services. W.B. Roddenbery Co. v. Kalich, 158 F.2d 289, 72 USPQ 138 (CCPA 1946); Rice-Stix Dry Goods Co. v. Industrial Undergarment Corp., 152 F.2d 1011, 68 USPQ 186 (CCPA 1946); and In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987). This is particularly true when a mark appears in textual material, such as is seen repeatedly on applicant's webpages, in which it is impractical each time to include the design feature of the mark. See Herbko International Inc. v. Kappa Books Inc., 308 F.3d 1156, 64 USPQ2d 1375 (Fed. Cir. 2002) [crossword puzzle design merely strengthens the impact of the word portion of the mark]; and CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983) [light bulb feature that emphasize "Thinker" portion of THINKER TOY mark does not obviate likelihood of confusion with TINKERTOY arising from consideration of the marks in their entireties].

Here, the arrow hitting the bull's eye accentuates the suggestion as to the "accuracy" of the indoor "temperature" achieved as a result of applicant's services. While this arrow design creates an obvious difference in appearance, we do not find it to be significant for purposes of

distinguishing between the overall commercial impressions of these two marks.

Rather, we agree with the Trademark Examining Attorney that these two marks convey the same connotation, and thus that the marks, when considered in their entireties, are quite similar in terms of overall commercial impression.

In short, we find that when used on legally identical services, applicant's mark ACCU-TEMP HEATING & AIR CONDITIONING, INC. and design is likely to cause confusion with the registered, stylized mark ACCUTEMP REFRIGERATION INC.

Decision: The refusal to register under Section 2(d) of the Lanham Act is hereby affirmed.